

AMENDMENT NUMBER ONE
TO AN AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
RLK ENGINEERING, INC. (CONSULTANT)
FOR
ENGINEERING DESIGN SERVICES

Made as of the _____ day of _____ in the year Two Thousand Nine:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and the Consultant: **RLK Engineering**
6175 Main Street, Suite 395
Frisco, Texas 75034
Telephone: (214) 619-1733
Facsimile: (214) 619-1833

for the following Project: **Rolater Road East Improvements – (Independence Parkway to Custer Road)**

The City and the Consultant agree as set forth below.

THIS AMENDMENT NUMBER ONE is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **RLK Engineering, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Amendment Number One."

WHEREAS, the City and Consultant desire to amend the Agreement for the purpose of revising Scope of Services (defined in the Agreement) to include Amended Services for the completion of a design revision requested by the City; referencing the

Amended Services in relation to the Project Schedule (defined in the Agreement); revising the Consultant's Fee (defined in the Agreement) to include the provision of the Amended Services relating to design revision requested by City; revising the amount of the final payment of the Consultant's Fee (defined in the Agreement) allocated towards the completion of the Record Documents for the project; revising the percentage of Consultant's Fee (defined in the Agreement) allocated toward the completion of the requirements associated with the Texas Architectural Barriers Act (the "Barriers Act") and ensuring the City's receipt of the Notice of Substantial Compliance for the Project, issued by the Texas Department of Licensing and Regulation (the "TDLR"); referencing the Amended Services for the Project in relation to the Consultant's submission of invoices to the City for work on the Project; and referencing the Amended Services for the Project in relation to the City's ownership of the Project Documents, which agreement is incorporated herein by reference as if fully set forth herein, hereinafter referred to as "Amendment Number One," and

WHEREAS, the City and Consultant desire to amend the Agreement as hereinafter set forth.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, the mutual benefits to be obtained hereby and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Consultant do mutually agree as follows:

1. **Additional Project Services**. City and Consultant agree that this Amendment Number One amends the Agreement for the purpose of, among other things, revising Project services to be performed by Consultant, as more particularly described in the following exhibits, attached hereto and incorporated herein for all purposes:
 - a. Exhibit "H," Scope of Revised Services to Complete Design Revisions Requested by City, dated October 20, 2009.
 - b. Exhibit "I," Compensation Schedule / Project Billing / Project Budget for Revised Services to Complete Design Revisions Requested by City, dated October 20, 2009.
2. **Amendment to Agreement, Article 1, Section 1.2, Scope of Services** – Article 1, Section 1.2 of the Agreement is hereby amended as follows:

"1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," **and Exhibit "H"**, which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree

that deviations or modifications to the scope of services described in Exhibit "A," and Exhibit "H", in the form of written change orders, may be authorized from time to time by the City."

3. **Amendment to Agreement, Article 1, Section 1.3, Schedule of Work** – Article 1, Section 1.3 of the Agreement is hereby amended as follows:

"1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" and the Compensation Schedule / Project Billing / Project Budget for Revised Services to Complete Design Revisions Requested by City, dated October 20, 2009 attached hereto as Exhibit "I" and incorporated herein by reference for all purposes, but in no event shall the Project be completed any later than July 31, 2009 December 31, 2010."

4. **Amendment to Agreement, Article 3, Section 3.1, Compensation for Consultant's Services** – Article 3, Section 3.1 of the Agreement is hereby amended as follows:

"3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a Lump Sum and Hourly Basis, for an amount not to exceed ~~Two Hundred Eleven Thousand Five Hundred and 00/100 Dollars (\$211,500.00)~~ Two Hundred Twenty Thousand Two Hundred Fifty and 00/100 Dollars (\$220,250.00) ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B," and the Compensation Schedule / Project Billing / Project Budget for Revised Services to Complete Design Revisions Requested by City, dated October 20, 2009 as set forth in Exhibit "I".

5. **Amendment to Agreement, Article 3, Section 3.1.1, Completion of Record Documents** – Article 3, Section 3.1.1 of the Agreement is hereby amended as follows:

"3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final ~~five~~ four and eight tenths percent (~~5~~ 4.8%) of the Consultant's Fee, or Ten Thousand Five Hundred Seventy-Five Dollars and 00/100 (\$10,575.00). The electronic

formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided **Design and Drafting Drafting and Design** ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement."

6. **Amendment to Agreement, Article 3, Section 3.1.4.6, TDLR Notice of Substantial Compliance**— Article 3, Section 3.1.4.6 of the Agreement is hereby amended as follows:

"3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final ~~five~~ **four and eight tenths** percent (~~\$ 4.8%~~) of the Consultant's Fee, or Ten Thousand Five Hundred Seventy-Five Dollars and 00/100 (\$10,575.00). shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project."

7. **Amendment to Agreement, Article 3, Section 3.2, Direct Expenses** – Article 3, Section 3.2 of the Agreement is hereby amended as follows:

"3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B" **and the Compensation Schedule / Project Billing / Project Budget for Additional Services to Complete Design Revisions Requested by City, dated October 20, 2009, attached hereto as Exhibit "I"** and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment."

8. **Amendment to Agreement, Article 3, Section 3.4, Invoices** – Article 3, Section 3.4 of the Agreement is hereby amended as follows:

“3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit “B,” **and Exhibit “I.”** On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.”

9. **Amendment to Agreement, Article 4, Section 4.1, Documents Property of the City** – Article 4, Section 4.1 of the Agreement is hereby amended as follows:

“4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City’s prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit “A,” **and Exhibit “H.”** Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit “A” **and Exhibit “H”** to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant’s permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City’s own risk.”

10. **Amendment to Exhibit "B," Compensation Schedule / Project Billing / Project Budget.** Exhibit "B," Compensation Schedule / Project Billing / Project Budget is hereby amended as follows:

"...I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
February 19, 2008 October 20, 2009	--	City Council authorizes City Manager to execute Amendment Number One; City Issues Notice to Proceed to Consultant.
February 26, 2008 October 29, 2009	--	Consultant's receipt of fully executed Amendment Number One.
August 31, 2008 January 31, 2010	\$ 62,150.00	Task Two, Final Engineering Design (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
July 15, 2009 December 1, 2010	\$21,150.00	Task Three, Bidding & Construction Phase (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
July 31, 2009 December 31, 2010	\$10,575.00 (5% of Consultant's Fee)	Task Four, Completion of Record Documents (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).
July 31, 2009 December 31, 2010	\$10,575.00 (5% of Consultant's Fee)	Task Five, TDLR Notice of Substantial Compliance (Task Completed and all task-related deliverables completed as stated in Exhibit "A" and accepted by the City).

11. **Complete Agreement.** This Amendment Number One, including the exhibits attached hereto and labeled "H" through "I," both of which are incorporated herein for all purposes, constitutes the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Amendment Number One may not be amended,

supplemented, and/or modified except by written agreement duly executed by both parties. Exhibits "H-I" are attached hereto and made a part of the Agreement and this Amendment Number One.

12. **Counterparts.** This Amendment Number One may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one Amendment Number One. A facsimile signature will also be deemed to constitute an original if properly executed.
13. **Controlling Agreement.** To the extent any provision contained herein conflicts with the Agreement, the provisions contained herein shall supersede such conflicting provisions contained in the Agreement.
14. **Defined Terms / Ratification of Agreement.** Any term not defined herein shall be deemed to have the meaning ascribed to it under the Agreement. Except as expressly amended hereby, all of the terms, provisions, covenants and conditions of the Agreement are hereby ratified and confirmed and shall continue in full force and effect.
15. **Authority to Execute.** The individuals executing this Amendment Number One represent and warrant that they are empowered and duly authorized to so execute this Amendment Number One on behalf of the parties they represent.
16. **Entire Agreement / Amendment Number One.** This Amendment Number One, and the Agreement embody the entire agreement by and between the parties regarding the subject matter hereof. There are no oral understandings or agreements between the parties regarding the subject matter hereof.
16. **Venue.** The Agreement and Amendment Number One shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.
17. **Assignment.** This Amendment Number One may not be assigned except as authorized in the Agreement.

IN WITNESS WHEREOF, the parties have executed this Amendment Number One to the Agreement, and caused this Amendment Number One to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

City of Frisco, Texas

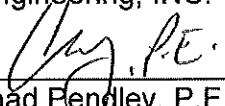
By: _____

George Purefoy

Title: City Manager

CONSULTANT


RLK Engineering, INC.

By:  P.E.

Chad Fendley, P.E.

Title: SR. PROJECT MANAGER

APPROVED AS TO FORM:



Abernathy, Roeder, Boyd, & Joplin, P.C.

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2009.


NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF Collin:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **CHAD PENDLEY** KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 9th DAY OF October, 2009.



NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 3/19/2012

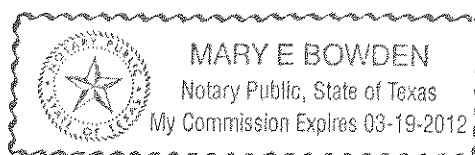


EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES
TO COMPLETE DESIGN REVISIONS REQUESTED BY CITY
DATED OCTOBER 20, 2009

Agreement by and between the City of Frisco, Texas (City)
and RLK Engineering, Inc. (Consultant)
to perform Professional Engineering Services –
Rolater Road East Improvements from Independence Parkway to Custer Road

I. PROJECT DESCRIPTION.

Engineering services related to the construction of two (2) westbound lanes (ultimate 6-lane) for Rolater Road from Independence Parkway to Custer Road. The total length of the roadway to be constructed is approximately 4,100 feet and includes paving, bridge, drainage, irrigation, and illumination design.

Consultant is to provide additional engineering services for the hydrologic and hydraulic analysis of the culver location on Rolater Road immediately east of Custer Parkway in Frisco.

II. TASK SUMMARY, BASIC SERVICES.

A. **Task Seven, Hydrologic and Hydraulic Analysis** – Consultant shall complete the following sub-tasks:

- 7.1 Review calculations and design discharges based upon the Rolater Road drainage plans and the study completed by CEI on the proposed downstream improvements. Using the collected information, prepare a HEC-HMS model of the watershed to determine design discharge that is in compliance with the City criteria.
- 7.2 Determine tailwater condition for the proposed culvert improvements using the design discharge and the provided aerial and field topographic information and information from the CEI study as necessary to develop a HEC-RAS hydraulic model of the downstream channel.
- 7.3 Determine a size and calculate the hydraulics for the proposed culvert and determine the headwater elevation at the upstream headwall.
- 7.4 Provide a summary report of findings and coordinate with the City during review of the study to address the City's questions and comments and make revisions to the study as required.

II. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.

A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project

EXHIBIT "H"
SCOPE OF ADDITIONAL SERVICES
TO COMPLETE DESIGN REVISIONS REQUESTED BY CITY
DATED OCTOBER 20, 2009

shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

1. Quantities in excess of the amounts as stated in the Scope of Services.

III. PROJECT LABOR ALLOCATION.

Task	Task Name	Labor Hours
TASK 7	Hydraulic and Hydrologic Analysis	80.0
		80.0
TOTAL		

- End of Scope of Services -

EXHIBIT "I"
**COMPENSATION SHCHEDULE / PROJECT BILLING / PROJECT BUDGET FOR
ADDITIONAL SERVICES TO COMPLETE DESIGN ADDITIONS REQUESTED BY
CITY DATED OTOBER 20, 2009**

Agreement by and between the City of Frisco, Texas (City)
and RLK Engineering, Inc. (Consultant)
to perform Professional Engineering Services –
Rolater Road East Improvements from Independence Parkway to Custer Road

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY.

MONTH, DATE, YEAR	DOLLAR AMOUNT	TASK COMPLETED
October 20, 2009	--	City Council approval of Resolution authorizing the City Manager to execute Amendment Number One to the Agreement; City issued Notice to Proceed to Consultant.
October 29, 2009	--	Consultant's receipt of fully executed Agreement.
January 31, 2010	\$8,750.00	Task Seven, Hydrologic and Hydraulic Analysis (Task Completed and all task-related deliverables completed as stated in Exhibit "H" and accepted by the City).
<hr/>		
TOTAL CONSULTANT'S FEE (NOT-TO-EXCEED)	\$8,750.00	

II. PROJECT BUDGET SUMMARY

A. Basic Services

1. Description of Basic Services

a. **Task Seven, Hydrologic and Hydraulic Analysis** \$ 8,750.00

2. **Total Basic Services (Lump Sum, Not-To-Exceed)** \$ 8,750.00

B. Special Services.

1. Description of Special Services.

a. Additional Construction Engineering Assistance \$ 0.00

b. Completion of Record Documents \$ 0.00

2. Total Special Services (Hourly, Not-To-Exceed) \$ 00.00

C. Direct Expenses.

1. Total Direct Expenses (included in fees above) \$ 0

D. Project Budget, Grand Total (Not-To-Exceed) \$ 8,750.00